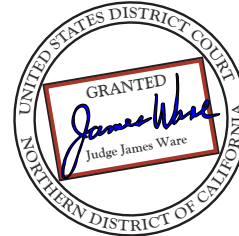


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Attorneys for Plaintiff  
 SCOTT SALYER, individually, and as  
 Trustee of the Scott Salyer Revocable  
 Trust

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 (SAN JOSE DIVISION)

SCOTT SALYER, individually, and as  
 Trustee of the Scott Salyer Revocable  
 Trust,

Plaintiff,

vs.

SALYER AMERICAN FRESH FOODS;  
 FRED SALYER; LINDA SALYER LEE,  
 individually and as Trustee of the Linda  
 Salyer Lee Revocable Trust; THOMAS  
 WELCH; DONALD BLODGETT; and  
 LAWRENCE RYAN,

Defendants.

CASE NO. C05-3562 JW

**PLAINTIFF'S REQUEST FOR LEAVE OF  
 COURT TO FILE SUPPLEMENTAL  
 BRIEFING IN OPPOSITION TO MOTION  
 TO DISMISS, OR IN THE ALTERNATIVE,  
 FOR A STAY**

**Hearing Date: ~~February 27, 2006~~**

**Time: 9:00 a.m.**

**Judge: Honorable James Ware**

Pursuant to Rule 7-4(d) of the Civil Local Rules for the Northern District of California,  
 Plaintiff, Scott Salyer, individually, and as Trustee of the Scott Salyer Revocable Trust  
 ("Plaintiff"), hereby requests the Court's approval to file supplemental briefing (a "Surreply") in  
 Opposition to Defendants' Motion to Dismiss, or in the Alternative, to Stay this Action. This  
 supplemental briefing would not exceed **seven (7) pages** in length and would be filed on or  
 before 12:00 p.m. on **February 21, 2006** (February 20 is a Court holiday). The hearing date on

1 this Motion is February 27, 2006. Defendants' Reply is due today (February 13, 2006). Good  
2 cause exists for permitting Plaintiff to file this supplemental briefing in that:

3 1. Based upon the Court's Order Continuing the Hearing on this Motion from  
4 December 19, 2005 to February 27, 2006, Defendants have had **two and a half months** to  
5 prepare and file their Reply Brief in Support of their Motion to Dismiss, or in the Alternative,  
6 for a Stay. The Court issued this Scheduling Order on November 29, 2005 -- the very day after  
7 Plaintiff had filed his Opposition, in a timely manner, to Defendants' Motion.

8 2. On December 2, 2005, Plaintiff, citing the briefing schedule that had resulted  
9 from the Court's November 29, 2005 Order, filed a Request for Clarification of said Order. (A  
10 true and correct copy of this Request for Clarification is attached as Exhibit A to the Declaration  
11 of Brian P. Maschler).

12 3. The Court denied Plaintiff's Request for Clarification. Thus, per Civil Local Rule  
13 7-3(c), Defendants' reply papers were due on February 13, 2006, rather than on December 5,  
14 2005, when the Reply would have been due under the original hearing schedule. Judge Ware's  
15 clerk, in notifying Plaintiff's counsel of the Court's denial of Plaintiff's Request for  
16 Clarification, noted that one avenue of recourse would be to seek leave to file a surreply.

17 4. On February 13, 2006, before Plaintiff's counsel had received Defendants' reply  
18 papers, Plaintiff's counsel requested of defense counsel, Ms. Rebecca Connolly of Grunsky,  
19 Ebey, Farrar & Howell, that Defendants stipulate to the supplemental briefing requested herein.  
20 Defendants' counsel refused, stating that "we [plaintiff] would just have to file an application [to  
21 the Court]." Defense counsel gave no explanation for their refusal.

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7. In view of the foregoing, and the fact that Defendants' Motion is a dispositive motion, the supplemental briefing requested herein is both fair and reasonable.

Respectfully submitted,

Dated: February 13, 2006

GORDON & REES LLP

By:                     /s/                      
BRIAN P. MASCHLER  
Attorneys for Plaintiff  
SCOTT SALYER, individually, and SCOTT  
SALYER, as Trustee of the Scott Salyer  
Revocable Trust

Plaintiff's request is granted. The hearing date is continued from February 27  
to March 13, 2006 at 9:00 a.m.

dated: February 17, 2006



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